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Please find below and/or attached an Office communication concerning this application or proceeding.

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1                    RECORD OF ORAL HEARING
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3          UNITED STATES PATENT AND TRADEMARK OFFICE
4                         _____
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6             BEFORE THE BOARD OF PATENT APPEALS
7                      AND INTERFERENCES
8                         _____
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10       Ex parte ELIZABETH SHARPE and JOHN LESLIE FRASER
11                        _____
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13                      Appeal 2008-0291
14                    Application 09/670,635
15                    Technology Center 2100
16                        _____
17
18               Oral Hearing Held: April 8, 2008
19                        _____
20
21
22  Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and CAROLYN
23  D. THOMAS, Administrative Patent Judges.
24
25  ON BEHALF OF THE APPELLANTS:
26
27            ROBERT HAILS, ATTORNEY
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32
33       The above-entitled matter came on for hearing on Tuesday, April 8,
34  2008, commencing at 9:00 a.m., at The U.S. Patent and Trademark Office,
35  600 Dulany Street, Alexandria, Virginia, before Dominico Quattrocioccui,
36  Notary Public.
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1   MR. HAILS: Good morning.

2   MS. BEAN: Calendar Number 3, Appeal Number 2008-0291. Mr.

3 Hails.

4   JUDGE DIXON: Hello, Mr. Hails.

5   MR. HAILS: Good morning, how's everyone?

6   JUDGE DIXON: All right. You have 20 minutes for your

7 presentation. Begin whenever you're ready.

8   MR. HAILS: Yes, Sir. Okay, may it please the Board; my name is

9 Bob Hails, with Kenyon & Kenyon representing Success Limited in this

10 Appeal.

11   This invention relates to an archiving system, can be either organized

12 archiving system for digital media items, videos, audio clips, photographs,

13 what have you. This, this system is based upon the idea human beings

14 when, when they run through a history of stored media items do so

15 sometimes in the context of social groups; the team from school, band you

16 might of played in, in high school, graduate school, college, that kind of

17 thing.

18   So, they organize their life experience in the context of these social

19 groups, and then they archive their stored digital media items

20 correspondingly. This case -- so what you'll see in the claims is we have

21 generally a step of identifying a user and assigning them to a particular

22 group. And, then delivering archiving data to the user actually in a, in a

23 query asking him or her how do you want to archive this thing? To, to do it,

24 provided valid selections that are tied to this particular social group or group,

25 however how it's claimed.

1   This -- we believe that this basic feature distinguishes over the art that

2   is of record; Shneiderman and Mizoguchi and, and, and provides, you know,

3   an inventive concept that is unique over the collection of art that is, that is

4   provided to us. So, you'll, you'll find it claimed in a variety of different

5   ways. There are, I think, approximately half dozen Independent Claims for

6   you. All of them recite a step of identifying a group to which the user

7   belongs or authenticating the user based upon the group.

8   And, then there are claims that say, for archiving purposes we're

9   going to identify. For example, in Claims 58, identifying candidate

10   identification values that are based upon the group with whom you're,

11   you're -- the operator has authenticated providing a query that identifies that

12   candidate information. And, then receiving selections based on the

13   candidate information values are going to have valid selections of event

14   types and, and persons. So, if you are, you know, if you're, if you're getting

15   the band back together or whatever the, the thing is, if you, if you're, if

16   you're going through that life experience there will be a number of events

17   that are associated with that life experience and that social group that may be

18   inappropriate for graduate school; or, may be inappropriate for other kinds

19   of things.

20   So, so having these candidate identification values tied to the group

21   and providing them in a manner to allow a user to, A, archive the digital

22   media items in the first instance, or in other claims to retrieve them to have

23   this kind of nostalgia walk through, you know, down memory lane, you can,

24   you can pick a social group that is, that you want to review or you can pick

25   not only a combination of the particular social group and perhaps certain

1 people that you, that you want to, you know, browse through this collection

2 based upon or certain event types to, to further narrow those things.

3   And, so the system would go through and would retrieve things that

4 have been previously archived and present them to you. You know, it's

5 something that, that resembles some type of screen, you know, slide show

6 method, or, or other things.

7   There are different claims talking about the, the even types and the,

8 and the persons are previously registered with a particular social group that's

9 in Claim 66.

10   And, then there are other Claims 114 and, and those sorts of things. I

11 claimed a little bit eccentrically, but basically it says we have a selection of

12 zero or more event types from a predetermined plurality of group, group;

13 even types that are specific to the group. So, you will always see this

14 concept of people and event types being tied to the groups in our claims.

15 And, we believe that that's not shown in any of the cited references.

16   There are two that, that are the primary references that have been

17 asserted against us in the rejections. One is Shneiderman. Shneiderman is a

18 system that basically wanted to avoid people from having to type in names

19 over and over and over and over again. So, they have a master list of people,

20 right. You type in John Q. Public, or whatever; and assigned to a photo in

21 the first instance then John Q, Public is available to you in some type of drag

22 and drop method.

23   So, he shows annotation of photographs and he shows annotation, you

24 know, of assigning people to photographs; doesn't show anything having

25 two groups.

1   JUDGE DIXON: So, Shneiderman, the differentiation would be that

2   you have another layer of smaller groups of name as opposed to they just

3   have a master list.

4   MR. HAILS: They have a universe, right. I mean, the whole, the

5   universe of all people. I mean, as far as we can tell from the reference, every

6   person whose ever been typed into the system is sort of available to you

7   there; that's right. And, so there's no, there's no concept of groups. I, you

8   know, asking who is this, is this operator, and, you know, is he member of a

9   group. And then, and then tailoring this idea of archiving parameters to that,

10 that, that group. That's just absent from Shneiderman. Shneiderman, and,

11 and the Examiner, I mean if you read the Examiner's response, it's pretty

12 weak on, on that regard.

13   He, he says, oh, well, people just log into computer systems all the

14 time; so therefore, there must be this idea of group.

15   JUDGE DIXON: Well, wouldn't that -- the Examiner's position be

16 that to get access to the software you have to be a person who knows the

17 password to get into it, but just like any computer system so that would be

18 my group if you have access to the software; you're in my family, my group

19 of people. Wouldn't that be a group --

20   MR. HAILS: That may be the Examiner's position, he --

21   JUDGE DIXON: -- of sorts, but then you don't have multiple groups

22 unless you get into which isn't in the references, you know, different groups

23 of priority relative to the computer system or systems

24   MR. HAILS: I, I think I, I don't know what kind of references the

25 Examiner has been making. It's not in the reference, right. I mean, this is,

26 this is an extrapolation from, from the reference, and this is taking it beyond

1   anything that's actually disclosed in that particular reference. I mean, he, he,

2   he may think that it's inherent, I don't know. But, I, I, I would challenge

3   him on that, but, but,

4   JUDGE DIXON: Well, it's obviousness because it's combination so

5   --

6   MR. HAILS: We're in a situation. It's not so much the login, right.

7   I mean it's, it's, it's trying to get this group idea, you know, authenticating

8   the user and then using it also to tie it back to the queries that are presented

9   to the operator, right.

10   JUDGE DIXON: So the query is linked to the group.

11   MR. HAILS: And, and there, there isn't that. There isn't that in

12   either of these references. You know, they are -- and again, I mean, some of

13   our claims are talking about, hey we have these event types and people that

14   are previously registered as associated with the group.

15   There's nothing like that in there, I mean, and if, if, if the, if a

16   computer system says, yes you can run me, you can run this program, it

17   doesn't mean that, that we've gone to the second level of, of sophistication

18   that is shown in our claims. I, I don't think it's shown in Shneiderman.

19   So, so, I mean, I don't think his, you know, general logons are going

20   to get you there. You know, not withstanding, whether there is, they're

21   available in other references and those kinds of things. I mean, we're trying

22   to, we're trying to tie these two things together. Are you a member of a

23   group? Oh, great, here's a bunch of archiving parameters that are valid for

24   that group. Please select them and tell me how to archive this particular

25   picture of photo of video or what have you.

1   He also, he also refers to there's a single sentence in Shneiderman that

2   also talks about discussion groups sort of in a web application referring to a

3   photonet.com and gatheraround.com. It says expressly there that you're

4   typing in things, and captions.

5   Shneiderman definitely wants to avoid the repetitive typing nature of

6   this thing, but he isn't going to that next level which is what we think we

7   have captured in this, these claims.

8   The other, the other reference is called Mizoguchi. It's, it's actually a

9   camera. It's, it's not really an archiving system per se. It's -- and you can

10   think of it sort of as a camera plus either a laptop, I think of it as a camera

11   plus a PDA. It's got, it's got a calendar built into it. So, if you are taking

12   pictures -- let's say you're a professional photographer and you are taking

13   pictures, and you have a calendar such that you know you're going to a golf

14   event in the morning and you're going to a party in the afternoon. And,

15   you're actually working.

16   You're snapping away during the golf event and the computer knows

17   what time it is, and knows what time, you know, where you're supposed to

18   be as according to the calendar. And, so if it thinks you're on the golf

19   course because you're taking pictures at 1 p.m. and that's, that time has been

20   reserved for that particular event it's going to take information from that

21   calendar entry and pop it over to the camera, right; same thing with the

22   party.

23   So, it's smart enough to distinguish from the party and it also knows

24   that there's kind of like this nether world of, of unregistered space. You

25   know, things that don't -- aren't associated with appointments. And, I think

26   Mizoguchi says obviously we can't make copies in that particular instance.

1   Again, there isn't this idea of social groups, figuring out if how --
2   whether the user is a member of a particular group and then asking the user
3   how do you want to archive this thing. Here are, here are a list of valid
4   selections of people, and valid selections of event types. Please, please, you
5   know, tell us how to archive this thing so we can store it in our archive; or,
6   again how we're going to retrieve it.
7   Archiving, adding -- having data of people adding, and adding data of
8   events to particular photo items, I mean it's, it's shown. It's in the reference,
9   and we wouldn't contest that. Doing it in the abstract is, is known. We're
10   talking about doing it in the context of this social group construct, and, and
11   this episodic memory thing.
12   That is, I mean, the, there are, again, there are -- this is a thematic
13   difference or conceptual difference between our claims and the, the
14   identified prior art. It's, it's recited. We went through back and forth a
15   couple of times with this particular Examiner; tried to give some different
16   alternate sets of claim language going after the same basic idea, trying to, to,
17   to do things. Talking about these things as being, you know, again,
18   previously registered as associated with, with members of social groups.
19   But, you'll see in all of these things people and event types are going to be
20   tied to the group after the system is already identified whether you're a
21   member.
22   So, that's the -- you'll see that sort of generally through the
23   Independent Claims. I don't know if there are any questions about that. I
24   can talk about some other features in Dependent Claims if, if you'd like,
25   okay.

1   A couple of things there are, there are Dependent Claims relating to

2 things called trails. Trails are, again, if you're, if you're walking down

3 memory lane you may have identified as part of your archiving process a

4 sequence. You have 150 pictures that are associated with, you know, your --

5 the band, but, there are 15 or so that you want to see in a particular order.

6   You know, they go through a progression, a time ordered progression

7 that may make sense to you, so you just, you develop a display sequence of

8 how these things are going to be retrieved when they are retrieved. And,

9 there are, you know, pointers in the system that are maintained among them.

10 And, so when you jump to that particular trail you sort of follow the path

11 that is identified to you; didn't see any of that in Shneiderman or Mizoguchi.

12 It is the, the, the claim language talks about identifying display positions of

13 an item within a particular sequence.

14   Shneiderman has references, the things he calls collections, which are

15 just huge sets of pictures, but there isn't anything about display sequence or

16 ordered progression, or anything along those lines in that particular

17 reference. There are, there are claims also directed to these thing called high

18 points, which are features of the invention.

19   Basically, you know, not all, not all pictures are not all digital media

20 items are, are created equal. Some of them may have more personal

21 meaning to you than others. You identify those as a, as a high point. So,

22 their claim is talking about high points in the abstract, and other claims that

23 say a high point is a flag distinguishes, you know, high point pictures from

24 the remaining set of the pictures; nothing like that in the asserted reference,

25 in the references that are presented to us.

1   JUDGE DIXON: But, the Examiner's point was but you're recording
2   the pictures, so that's got to be a high point, but they --
3   MR. HAILS: So, everything is a high point, right? Everything is a
4   high point if you bothered to bring it into the system it's a high point, right?
5   Our high point says we distinguish this particular picture
6   JUDGE DIXON: It's a higher point.
7   MR. HAILS: -- from others.
8   JUDGE DIXON: Right.
9   MR. HAILS: So, so yeah, I mean in our system everything, you
10 know, we have a set of stuff in this archive, and we have a subset, or, or
11 flags to identify this one is special over every other. And, in Dicks, and in --
12 sorry, in Shneiderman, apologies, in Shneiderman, he says, I mean, the, the
13 Examiner is reading it to say, well, if you bothered to bring it in at all, it
14 must be important.
15   But, you know, there's no flag, right. Flag is a pretty, pretty definitive
16 computer science term, and there's no flag, you know, in, in Shneiderman
17 the, the intellectual effort of the Examiner -- sorry, of the, of the archiver to,
18 to bring it in.
19   So, I mean, again, we, we just think that there's, there's conceptual
20 hook here, and it, and it provides some real world advantages. It provides if,
21 if, if you look at the Shneiderman system, he brings in pictures. He's a
22 universe of pictures. He's really interested in doing things for like a
23 newspaper and kinds of things. We need to be able to find photos; pictures
24 of Boris Yeltsan and, and Bill Clinton, those kinds of things, right. And,
25 that's useful. But, but in terms of relating it to personal experience, and, and

1 providing sort of the nostalgic retrieval aspects that our invention provides,

2 it's not really going to get you there.

3   And, and it's not going to provide this organizational construct as

4 you've, you -- even you suggested that, you know, we are, we are further

5 organizing these things based upon the groups that we have this defined and

6 registered system. So, I mean, we are convinced we have something here.

7 And, and it's just not shown in this collection of references.

8   I guess a couple of other things to note; we, we structured some of

9 these claims to talk about, again to push these candidate identification values

10 to the user; and, so, so, again, we, we identify a group. We figure out, hey,

11 what are the identification values that are relevant to the group and we push

12 them to the user in the query and we receive a response back.

13   It is -- so this candidate identification values are just that; for example,

14 in Claim 62 there are candidates and then some selections are made from it,

15 so there's an extra level of sophistication provided by these persons and

16 events, and these other kinds of things which are provided beyond even

17 other kinds of group references.   And, in here there's, there's, there's a

18 passage in Mizoguchi that uses the buzz word, group. In, and it's used

19 differently. So, I just wanted to make sure that that is clear. There is, like, a

20 paragraph towards the end that says if you're a photographer and you are a

21 team of -- part of a team of photographers, a group, it may be sort of, it may

22 smart enough to work up and just to sign the, that identifier, you know, sort

23 of the team identifier.

24   And, we think that is, again, different. We are talking about asking

25 not only about membership, but then thinking out what are the valid

1   selections based upon that membership; pushing it to the operator and then

2   bringing back selections from that, from that thing.

3   So, so there's a universe of all the possible people that could be done.

4   There are this many that are associated with the group. We ask you about

5   that many and we may get a smaller set back. And, there's, there's --

6   JUDGE DIXON: That would be more --

7   MR. HAILS: -- nothing like that.

8   JUDGE DIXON: That would be more kin to Shneiderman's

9   collection.

10   MR. HAILS: Shneiderman's, Shneiderman's collection, when he

11   refers to a collection, he's got a collection table that refers to all photographs

12   that are held by the system. He's got, I think, a people table that refers to all

13   people the system has ever been told about. And, he doesn't really, I mean,

14   there are all sorts of end -- many to many kind of associations that can be

15   made. People can be members. People can be associated with photographs,

16   and therefore be members of multiple collections because collections can go

17   -- photographs can go to any collection.

18   There are -- but that's not, that's not asking, you know, that's not this

19   what are you a member of. Okay, here's universe of people. What are you a

20   member of --

21   JUDGE DIXON: It's related to a query.

22   MR. HAILS: -- and then winnowing down. There's no winnowing

23   down in, in Shneiderman whatsoever. And, and nor in Mizoguchi. Some of

24   the claims have, again, these pre-registration concepts provided in there

25   where pre-registering event types and people with social groups, and then,

26   and then presenting them to you sort of in a run time system. There are --

1   so, I mean, we -- again, these, this invention is different. And, we, we have

2   a bunch of different ways to attack this particular difference that we see.

3   And, and we think, I mean, if you stay faithful to the claim line which

4   a lot of these rejections sort of unravel, as you look deeper into it,

5   particularly the, the integrated functionality among not only the, the

6   Independent Claims of the Dependent Claims kind of back them up and talk

7   about the, the pre-registration stuff.

8   That's pretty much what I wanted to cover. Is there -- are there any

9   questions from the Board?

10   JUDGE DIXON: Any questions? No.

11   MR. HAILS: No, okay. Well, thank you for your time.

12   COURT REPORTER: I have one, just the spellings of, just the

13 correct spellings of Shneidermen, and, and the other one you mentioned,

14 Mizoguchi.

15   MR. HAILS: Mizoguchi, yes. Shneidermen is S H -- no C S H N E I

16 D E R, and then M A N, I think with a single N.

17   COURT REPROTER: Okay.

18   MR. HAILS: And, then Mizoguchi is M I Z O I think, G U C H I.

19   COURT REPORTER: Okay. I think that was all. Thank you.

20   MR. HAILS: I have to apologize for you, I speak rather quickly I

21 must say.

22   COURT REPORTER: Oh no, that's okay.

23   MR. HAILS: Earned your money today.

24   COURT REPORTER: Yeah.

25   MR. HAILS: Thank you very much.

26   JUDGE DIXON: Thank you.

1   MR. HAILS: Good day.

2   (Whereupon, the proceedings concluded on April 08, 2008).